

can be found, for example, on pages 18-22 and page 24, lines 14-16. Support for claim 41 can be found, for example, on page 17, first full paragraph, and support for claims 42 to 50 can be found, for example, on page 18, lines 1 and 2. Additionally, support for claims 51 to 59 can be found, for example, on page 8, first full paragraph; page 56, first, third and fourth full paragraphs; page 57, fifth full paragraph; and page 23, first full paragraph. Thus, no new matter has been added by way of the amendment.

Additionally, the specification has been amended to correct typographical errors.

The Restriction Requirement

The Examiner has required an election under 35 U.S.C. § 121, contending that the claimed inventions are distinct, each from the other.

In order to be fully responsive, Applicants hereby provisionally elect the invention of Group I, claims 1-10, 14, 15 and 22, drawn to polynucleotides, with traversal. Applicants point out that the claims 1-10, 14-15 and 22 have been cancelled and that new claims 25 to 59 are directed to subject matter falling within the scope of Group I as defined by the Examiner.

With respect to the Examiner's division of the invention into ten (10) groups and the reasons stated therefor, Applicants respectfully traverse. Applicants submit that even where two patentably distinct inventions appear in a single application, restriction remains improper unless it can be shown that the search and examination of both groups would entail a "serious burden" (*See* M.P.E.P. § 803). In the present situation, no such showing has been made.

Even assuming, *arguendo*, that Groups I-X represent distinct or independent inventions, Applicants submit that to search and examine the subject matter of all the Groups together would not be a serious burden on the Examiner. For example, a search of the polynucleotide claims would clearly provide useful information for the polypeptide claims. In many if not most publications, where a published nucleotide sequence contains an open reading frame, the authors also include, as a matter of routine, the deduced amino acid sequence and often related compounds such as agonists and antagonists including but not limited to antibodies. Thus, the search for polynucleotides commonly overlaps with those of related compounds and polypeptides. Thus, the search and examination of a polynucleotide, corresponding deduced polypeptide sequence, and other related compounds would not entail a serious burden.

Thus, in view of M.P.E.P. § 803, the claims of all of Groups I to X should be searched and examined in the subject application.


Accordingly, Applicants respectfully request that the restriction requirement under 35 U.S.C § 121 be reconsidered and withdrawn and the instant claims be examined in one application.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

If there are any fees due in connection with the filing of this paper, please charge the fees to our deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Michele M. Wales (Reg. No. 43,975)
Attorney for Applicants

Human Genome Sciences, Inc.
9410 Key West Avenue
Rockville, MD 20850
Telephone: (301) 610-5772

MMW/CB/ur

